



ATTORNEY DOCKET NO.: BAL-36

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Rouns, et al.)

Serial No.: 09/733,161)

Filed: December 8, 2000)

For: SILICONE ELASTOMER)
MATERIAL FOR USE WITH)
ENTERIC FEEDING DEVICE)

Examiner: LAM, ANN Y.

Art Unit: 3763

Deposit Account No.: 04-1403

Commissioner for Patents
Box Amendment
Washington, D.C. 20231

REQUEST FOR RECONSIDERATION

Dear Sir:

In response to the Office Action of September 25, 2002, Applicants respectfully request reconsideration and allowance of the present application.

REMARKS

The present application is directed to a gastrostomy feeding device, such as a balloon catheter, that includes a retaining member having improved resistance to acidic and enzymatic degradation when placed in the stomach of a patient. In accordance with claim 1 of the present application, the internal retaining member is made from a modified silicone elastomer. The term "modified silicone" is defined in the present application as a synthetic polymer containing a repeating silicon-oxygen backbone with organic side groups attached via carbon-silicon bonds (page 5, lines 16 through 19).

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In the Office Action, claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 5,997,503 to Willis, et al. Willis, et al. was filed in the U.S. Patent Office on February 12, 1998, and issued on December 7, 1999. The present application claims priority to a provisional application that was filed on December 9, 1999. As such, Willis, et al. is not a proper § 102(b) reference with respect to claim 1. Willis, et al. may qualify as prior art to claim 1 under 35 USC § 102(e).

Willis is directed to a balloon catheter comprising a shaft and a balloon attached to the distal tip of the shaft. Willis states in column 3 that the various components of the balloon catheter are formed from biocompatible materials such as medical grade silicone. As opposed to claim 1, however, Willis does not disclose an internal retaining member made from a modified silicone elastomer, as particularly defined in the present application. As such, Applicants submit that Willis, et al. fails to anticipate the invention defined in claim 1.

In the Office Action, claims 2-26 were rejected under 35 USC § 103(a) as being unpatentable over Willis, et al. in view of U.S. Patent No. 4,198,983 to Becker, et al. As discussed above, Willis, et al. may qualify as prior art under 35 USC § 102(e). Willis, et al., however, is not available as prior art under 35 USC § 103(a). Specifically, Willis, et al. was commonly owned with the present application at the time of filing¹. Thus, the rejection of claims 2-26 in view of the combination of Willis, et al. and Becker, et al. is rendered moot.

Although Willis, et al. is not available as prior art under 35 USC § 103(a), in order to further prosecution, Applicants submit that the claims as currently pending patentably define over Becker, et al. either alone or in combination with any prior art that is similar in scope to Willis, et al.

¹ Willis, et al. and the present application are both owned by the Kimberly-Clark Corporation.

Becker, et al. discloses a balloon-type catheter that includes a catheter shaft 10 and a balloon 22. Although Becker, et al. states that the shaft can be made from a thermoplastic material containing as one ingredient a cross-linked organic silicone elastomer (column 2, lines 16 through 33), Becker, et al. teaches that the balloon itself is made from a mixture of block polymers and mineral oil (column 5, line 58 to column 6, line 4). As such, not only does Becker, et al. fail to disclose or suggest constructing an internal retaining member from a modified silicone elastomer, but in fact teaches away from such a construction. As such, it is believed that the claims patentably define over Becker, et al.

In summary, Applicants respectfully submit that the present application is in complete condition for allowance. Favorable reconsideration is respectfully requested. Should any issues remain after consideration of this Response, however, Examiner Lam is invited and encouraged to telephone the undersigned at her convenience in an attempt to resolve any outstanding issues.

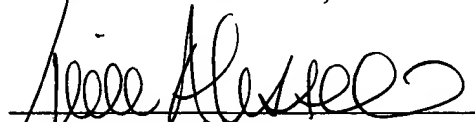
Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

1/24/03

Date



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ATTORNEY ET NO.: BAL-36 (BA00170)
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Rouns, et al.

Serial No.: 09/733,161

Filed: December 8, 2000

Confirmation No.: 2368

Title: Silicone Elastomer Material For Use With
Enteric Feeding Device

Group Art Unit: 3763

Examiner: Lam, Ann Y.

Our Account No.: 04-1403



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Commissioner for Patents
U.S. Patent and Trademark Office
Washington, DC 20231

REQUEST FOR RECONSIDERATION

This is a response/amendment/letter in the above-identified application and includes the herewith attachment of same date and subject which is incorporated herein by reference and the signature below is to be treated as the signature to the attachment in absence of a signature thereto.

Fee requirements (if any) have been calculated as shown below:

	Claims remaining after amendment		Highest number previously paid for		Present Extra		Additional Fee
Total Effective Claims	26	minus	26	=	0	x \$18 =	\$.00
Independent Claims	3	minus	3	=	0	x \$84 =	\$.00
If amendment enters <u>proper</u> multiple dependent claim(s) into this application for <u>first</u> time, add \$270.00 (per application)							\$.00
Since Official Action set an <u>original</u> due date of <u>December 25, 2002</u>							
PETITION is hereby made for an extension to cover the date this response is filed for which the requisite fee is enclosed (1 month \$110; 2 months \$410; 3 months \$930; 4 months \$1450)							\$ 110.00
If Terminal Disclaimer enclosed, add Rule 20(d) Official Fee (\$110.00)							\$.00
01/31/2003 BMSUYEN1 00000071 09733161							
SUBTOTAL:							\$ 110.00
01 FC:1251 110.00 DP							
If "small entity" verified statement filed [] previously, [] herewith, enter one-half (1/2) of subtotal and <u>subtract</u>							\$.00
TOTAL:							\$ 110.00
Other: _____							\$.00
TOTAL FEE ENCLOSED:							\$ 110.00

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. shown in the heading hereof for which purpose a duplicate copy of this sheet is attached. This statement does not authorize charge of the issue fee in this case.

ADDRESS:

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DORITY & MANNING

ATTORNEYS AT LAW, P.A.

By: Timothy A. Cassidy Reg. No.: 38,024 Date: January 24, 2003

Signature: *Timothy A. Cassidy*

I hereby certify that this correspondence and any referenced attachment and fee are being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents, U.S. Patent and Trademark Office, Washington, DC 20231, on January 24, 2003.

Sandra S. Perkins

(Typed or printed name of person mailing paper or fee)

Sandra S. Perkins
(Signature of person mailing paper or fee)

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